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Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Security Council
Fifty-ninth year

Letter dated 30 August 2004 from the Permanent Representative of Namibia to the United Nations addressed to the Secretary-General

I have the honour to transmit the attached memorandum on the question of Western Sahara (see annex).

I should be grateful if you would arrange for the present letter and the memorandum to be circulated, before 15 September 2004, as an official document of the General Assembly, under item 20 of the provisional agenda, and the Security Council.

(*Signed*) Martin **Andjaba**
Ambassador and Permanent Representative

* A/59/150.

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Annex to the letter dated 20 August 2004 from the Permanent Representative of Namibia to the United Nations addressed to the Secretary-General

Memorandum by the Frente Popular para la Liberación de Saguia el-Hamra y de Rio de Oro on the question of Western Sahara addressed to the Member States of the United Nations

In the aftermath of the military invasion and occupation of Western Sahara by the Moroccan army in October 1975, made possible by the renunciation on the part of the former colonial Power, Spain, of its responsibilities under the Charter of the United Nations, the international community has constantly been active in its efforts aimed at bringing about the decolonization of Western Sahara, the last colonial case in Africa.

I

The resolute work undertaken to that end by the Organization of African Unity (OAU, now the African Union) between 1976 and 1984 was frustrated by the lack of cooperation and of good faith of Morocco, whose intransigence and persistence in trying to legitimize the fait accompli of its illegal occupation of Western Sahara led OAU in 1984 to recognize and admit, as a member State, the Saharawi Arab Democratic Republic.

Instead of rectifying its conduct, the Government of Morocco decided to persist in its rebellion against African and international legality and thus withdrew from OAU.

II

In the framework of General Assembly resolution 40/50 of 2 December 1985, the Chairman of OAU and the Secretary-General of the United Nations in 1986 began a joint mediation aimed at obtaining acceptance by the two parties to the conflict — Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Rio de Oro (Frente POLISARIO) — of a settlement plan whose essential aim was "to enable the people of the Territory to exercise their inalienable right to self-determination and independence under conditions acceptable to them and, hence, to the international community" (para. 6 of the Secretary-General's report of 18 June 1990 (S/21360)).

The settlement plan was officially accepted by both Morocco and the Frente POLISARIO, thus allowing the Security Council to approve the plan in its resolution 658 (1990). The following year, the Security Council approved the deployment in the territory of the United Nations Mission for the Referendum in Western Sahara (MINURSO), with the explicit mandate of holding a referendum for self-determination at a specified date "not later than February 1991" in accordance with the timetable for the implementation of the settlement plan as approved by the Security Council in its resolution 690 (1991).

III

However, and with the clear intention of trying to implicate the United Nations in falsifying the lists of voters for the referendum in a way that would allow

Moroccan settlers to take part in the vote, the Government of Morocco engaged in policies of distortion and obstruction aimed at thwarting the implementation of the settlement plan. Those policies brought the entire peace process to a long stalemate that lasted until April 1997, when the new Secretary-General of the United Nations, Kofi Annan, appointed the former United States Secretary of State, James Baker III, as his Personal Envoy for Western Sahara.

Mr. Baker managed to bring the two parties to the negotiating table in an attempt to overcome the difficulties that had caused the deadlock in the peace process. The negotiations culminated in the signing by Morocco and the Frente POLISARIO of the Houston Agreements (Texas) in September 1997. By virtue of those Agreements, the referendum could have been held at the end of 1998 in accordance with the timetable presented by the Secretary-General to the Security Council in his report of 24 September 1997 (S/1997/742 and Add.1).

In fact, the Secretary-General estimated in that report that (paras. 26 and 27):

> "With these agreements ... the main contentious issues that had impeded the implementation of the plan have thus been satisfactorily addressed ... These achievements create the conditions to proceed towards the full implementation of the settlement plan, starting with the resumption of the identification [of voters]."

IV

Once again, Morocco reverted to its policies of obstruction, when MINURSO published, in February 2001, the list of persons entitled to take part in the referendum on the decolonization of Western Sahara. Morocco concluded that, if held, the decolonization referendum would lead Western Sahara to independence, an outcome that it was not willing to accept, and then decided to gradually derail the entire peace process.

In his recent interview broadcast on 19 August 2004 by PBS, an American television station, Mr. Baker stated: "The closer we got to implementing the settlement plan ... the more nervous I think the Moroccans got about whether they might not win that referendum."

Indeed, as recognized by the Secretary-General in paragraph 48 of his report of 19 February 2002 (S/2002/178), "Morocco has expressed unwillingness to go forward with the settlement plan". From the policy of partial obstruction, Morocco had passed to sheer reneging on the commitment that it had officially made before the Security Council in 1990, when it declared its acceptance of the settlement plan.

In his interview with PBS, Mr. Baker's assessment leaves no doubt about Morocco's responsibility for the failure of United Nations efforts undertaken so far to resolve the conflict:

> "For 10 or 11 years Morocco said publicly and privately that it wanted the settlement plan and wanted the referendum and then towards the very end, right after the voter list had been drawn up and the voters had been identified, it said, 'Well, it's no longer applicable, we're not going to go forward with the settlement plan'."

After several months of impasse, the Secretary-General and his Personal Envoy resumed their efforts to overcome the situation created by Morocco's

rejection. Those efforts led, in January 2003, to the preparation of the Peace Plan for the Self-Determination of the People of Western Sahara.

V

The Peace Plan contained in the Secretary-General's report of 23 May 2003 (S/2003/565 and Corr.1) envisages that, at the end of (a) a transitional period of five years (the settlement plan provided for six months), the United Nations would hold (b) a referendum for self-determination that would enable the Saharawi people to choose between national independence, integration with the occupying Power or the continuation of the transitional period (a new element not contemplated in the settlement plan). The scope of (c) the electoral body that would participate in that referendum (particularly crucial for the future of Western Sahara) was extended in order to include, in addition to the Saharawi native population of the Territory as foreseen in the settlement plan, the "residents" (Moroccan civilians) in Western Sahara between 1976 and December 1999.

Although this was a proposal containing elements that were clearly at odds with the original settlement plan, the Saharawi side decided, in early July 2003, to accept it, as evidence of a sincere will for peace and cooperation with the efforts of Mr. Baker and the Secretary-General.

The Security Council, following a lengthy debate, decided in its resolution 1495 (2003) of 31 July 2003 to "strongly support the Peace Plan" and to call upon the parties to work towards the "acceptance and implementation" of it.

Nevertheless, Morocco was to surprise everyone with what appeared to be a clear attitude of rejection of the Peace Plan. In the above-mentioned interview, Mr. Baker indicated with regard to Morocco's opposition to the Plan: "The Moroccans concluded that they were not even willing to risk a vote under those circumstances."

The pretexts put forward by Morocco for sustaining its negative response to the new proposal were not accepted by the Security Council, which, in its resolution 1495 (2003), pledged its full support for the Peace Plan. The Council thus deemed relevant the arguments advanced by the Secretary-General and his Personal Envoy in the above-mentioned report of 23 May 2003, which demonstrated that the position of Morocco was particularly untenable. In effect, in paragraph 51 of the report, the Secretary-General stated:

> "The main objection of Morocco to the Peace Plan seems to be that in the referendum to determine the final status of Western Sahara, one of the ballot choices is independence. However, independence is also one of the two ballot choices under the settlement plan [of 1990-1991] which Morocco had accepted."

In the following paragraph, he considered the Moroccan objection indefensible from the standpoint of international legality:

> "It is difficult to envision a political solution that, as required by Security Council resolution 1429 (2002), provides for self-determination but that nevertheless precludes the possibility of independence as one of several ballot questions."

It is in fact this exclusion that Morocco is seeking.

The Secretary-General did not, however, close the door on the possibility that Morocco would reconsider its position. In that context, the Security Council, after pledging its full backing in resolution 1495 (2003) to the proposal presented by Mr. Baker, agreed to extend the mandate of MINURSO until October 2003.

In his report of 16 October 2003 (S/2003/1016) and in the face of Morocco's persistence in its entrenched attitude of rejection, the Secretary-General formally launched a call to the Government of Morocco. Thus, in paragraph 27, he stated that:

> "The peace plan represents a fair and balanced approach to the question of Western Sahara ... The acceptance of the Peace Plan by the Frente POLISARIO now offers a window of opportunity for solving the long-standing dispute. I urge Morocco to seize the opportunity and positively engage in the process by accepting and implementing the Plan."

In paragraph 28, the Secretary-General expressed "the sincere hope that by that time, the Kingdom of Morocco will be in a position to engage positively in implementing the Plan. If not, I will revert to the Security Council in January with my views on the future of the peace process in Western Sahara, as well as on the mandate of MINURSO."

VI

By January 2004, Morocco had not given any positive response. The Security Council again extended the mandate of MINURSO until the end of April.

In his report of 23 April 2004 (S/2004/325 and Add.1), the Secretary-General and his Personal Envoy informed the Security Council of the *definitive rejection* by Morocco of the Peace Plan. In fact, in its response, which appears as annex I to the report, Morocco rejects the implementation of the principle of self-determination for the Saharawi people, an inalienable right that constitutes the backbone of the United Nations doctrine related to Western Sahara (as expressed by the Security Council, the General Assembly and its Special Political and Decolonization Committee (Fourth Committee) and the International Court of Justice).

Instead, the only thing that Morocco has shown willingness to consider is an arrangement that a priori excludes the right of the Saharawi people to independence. This plan would be, according to the official response given by Morocco, "an autonomy (for Western Sahara) within the framework of Moroccan sovereignty". Morocco, according to paragraph 5 of the report of 23 April 2004, insists that an "autonomy-based political solution can only be final". The Secretary-General rejected that position since it "has adverse implications for self-determination, as called for in resolution 1429 (2002) [of the Security Council]" (S/2004/325, para. 5).

VII

The claim to sovereignty made by Morocco with regard to Western Sahara and its subsequent invasion of the Territory were the cause of the conflict that began in 1976. In this sense, the Secretary-General and his Personal Envoy came to affirm, in their report of 23 April 2004, that in fact "the issue of sovereignty is, of course, the fundamental issue which has divided the parties for all these years" (S/2004/325, para. 5).

In accordance with international legality, only a free and fair referendum for self-determination of the people of the Territory, organized and supervised by the United Nations, could settle this question, something that Morocco now rejects out of hand, despite the fact that it had already accepted the referendum as provided for in the original settlement plan of 1990-1991. Furthermore, the Moroccan claim of sovereignty had already been categorically rejected by the two entities of the United Nations with competence in legal matters.

On the one hand, in a historic legal opinion issued on 16 October 1975, the International Court of Justice concluded that "the materials and information presented to it do not establish any tie of territorial sovereignty between the Territory of Western Sahara and the Kingdom of Morocco". The Court also stressed the colonial nature of the question of Western Sahara and recommended accordingly "the implementation of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory".

On the other hand, 26 years after the invasion and illegal occupation of the Territory, the United Nations, through its Office of Legal Affairs, issued, on 29 January 2002, an opinion following a request made by the Security Council in November 2001:

> "The Madrid Agreement [signed jointly by Mauritania, Morocco and Spain on 14 November 1975] did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power — a status which Spain alone could not have unilaterally transferred."

Furthermore, it is also clear to Mr. Baker that the Moroccan claim to Western Sahara did not hold any international legitimacy. In his interview, he indicated that:

> "I know of hardly any country in the world that, as a matter of international law, or international recognition, recognizes Morocco's claim to Western Sahara."

Mr. Baker went to the very substance and nature of the conflict by saying in the same interview:

> "Morocco will never receive the imprimatur of international legitimacy for its occupation of the territory unless it works out some arrangement that is blessed by the international community."

VIII

In spite of the Moroccan rejection of the Peace Plan, both the Secretary-General and his Personal Envoy still remain convinced that the Plan is the best avenue leading to a definitive solution to the conflict. Thus, in paragraph 38 of the report of 23 April 2004, the Secretary-General states that:

> "It is my view and that of my Personal Envoy that the Peace Plan still constitutes the best political solution to the conflict over Western Sahara which provides for self-determination, as required by paragraph 1 of resolution 1429 (2002). I hope, therefore, that the Security Council will reaffirm its recent unanimous support for the Peace Plan and will once again call upon the parties

to work with the United Nations and each other towards acceptance and implementation of the Peace Plan."

In response to this call, the Security Council adopted, on 30 April 2004, resolution 1541 (2004), in which it "reaffirms its support to the Peace Plan for Self-Determination of the People of Western Sahara". The Security Council also extended the mandate of MINURSO until 30 October 2004, while awaiting a report from the Secretary-General on new developments with regard to the implementation of resolution 1541 (2004). This deadline would also allow the General Assembly to tackle, at its fifty-ninth session, the question of Western Sahara from the viewpoint of decolonization.

IX

Just as it had frustrated the efforts made by OAU between 1976 and 1984, the Government of the Kingdom of Morocco has responded with the same obstructionist attitude by thwarting and paralysing the resolute efforts made by the United Nations throughout the past 13 years.

The Third African Union Summit of the Heads of State and Government, held in Addis Ababa from 6 to 8 July 2004, expressed its concern about these developments. In his report submitted to the Heads of State, the President of the Commission of the African Union stated:

> "The Peace Plan was accepted by the Frente POLISARIO, and Algeria, as one of the neighbouring countries interested in the issue, offered support to the Plan. But Morocco rejected the Plan as being unacceptable. Subsequently, the Security Council consented to giving Morocco more time for further reflection, in the hope that it would agree and implement the Peace Plan. Morocco has since responded to the Security Council's request. However, its response does not demonstrate the flexibility that had been expected. In fact, its reaction even reveals a hardening position, as it not only rejects the option of independence, but also considers the transitional phase, as an interim arrangement preceding the referendum, unacceptable."

Conclusions

On 11 June 2004, the Secretary-General addressed a letter (S/2004/492) to the President of the Security Council in which he states: "Mr. Baker has informed me that he believes that he has done all he can do on this issue and he has therefore offered his resignation as my Personal Envoy. It is with deep regret that I have accepted his resignation."

The departure of Mr. Baker, who, as the Secretary-General's Personal Envoy, had dedicated seven years of concentrated work with a view to bringing about a just and lasting solution to the colonial conflict of Western Sahara, was received with "fireworks" by Morocco. Its Minister for Foreign Affairs, Mohamed Benaissa, in a statement circulated on 12 June 2004 by the official news agency, Maghreb Arabe Presse (MAP), welcomed Mr. Baker's resignation by affirming that "it was the outcome of the tenacity of Moroccan diplomacy".

Thirty years have already passed by since Morocco decided, by an act of sheer force contrary to international legality, to occupy a territory and a country that did not belong to it.

The conclusions that can be drawn from the reports of the Secretary-General of the United Nations and the President of the Commission of the African Union, as also from Mr. Baker's interview with PBS mentioned above, are clear.

Morocco has not only reneged on its commitments under the settlement plan that "it had accepted for many years", but also on the responsibilities inherently entailed by its being a Member of the United Nations, which require from any Member State that it fulfil in good faith, and abide by, the resolutions, principles and objectives of the Charter, which consider the peoples' right to self-determination an essential pillar for peace and international security.

To illegally occupy a neighbouring country, to oppress its people for 30 years, to plunder its natural resources, to cause wars and tension in the region and to frustrate the invaluable peace efforts made by the international community is unacceptable behaviour that constitutes a serious challenge to the very consistency, validity and credibility of the international system represented by the United Nations.

It is clearer than ever today that the long waiting of the Saharawi people, whose country remains partly under foreign occupation in the twenty-first century, and that the patience of the international community and its hope to see this conflict resolved peacefully have been ignored by Morocco through its rejection of the settlement plan and the Peace Plan.

In spite of the admission by OAU of the Saharawi Republic, some Member States of the United Nations — on their own or at the request of Morocco — had been waiting for the outcome of the referendum process in order to decide on the very question that is at the heart of the decolonization conflict, namely, the right of the Saharawi people to independence and its legitimate aspiration to be part of the international community, as a free and sovereign nation, along with the large and small States of the world.

In other words, the case of Western Sahara entails implicitly a question with regard to a substantial issue that consists of knowing to what extent the formal recognition of the right to independence of a people subjected to foreign occupation is dependent upon the will of an occupying Power that, contrary to its own commitments, has publicly demonstrated its unwillingness to cooperate with the United Nations in the resolution of the conflict.

Facts have demonstrated that the process that should have culminated in a referendum for self-determination organized by the United Nations has not reached the natural stage provided for in the resolutions of the General Assembly and the Security Council owing to the attitude of Morocco.

The Saharawi people, which has resisted and will continue to resist this foreign occupation until the full attainment of its legitimate rights to self-determination and independence, expresses its thanks to all nations of the world that have believed in and backed its just cause. To all of them, it reaffirms its willingness to spare no effort in its cooperation with the United Nations for the implementation of either the Peace Plan or the settlement plan, which are the two proposals for a solution that

have received the backing of the Security Council and the General Assembly. In this context, the Saharawi people is confident that Member States will act resolutely and use all necessary leverage in order to ensure that Morocco cooperates with the efforts of the United Nations and allows the holding of the referendum for self-determination that has been so long awaited and so many times postponed.